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BULLETIN

NO. 92 - 4

October 23, 1992

Subject: A SUMMARY OF LAWS AND RULES IMPORTANT TO AGENTS AND BROKERS

Periodically, we issue bulletins updating information about the basic laws and rules that insurers, agents, and brokers must observe. Our last bulletin on this subject was issued in January, 1990. Thousands of new agents have been licensed since then. This should be helpful to them, and serve as a refresher course for long-time licensees.

General Rules

1. Licensees can not act as or hold themselves out to be brokers unless licensed as such, nor can they represent an insurance company without being appointed by the company as its agent. (RCW 48.17.010, 48.17.060 and WAC 284-48-020.)

2. Only licensed brokers can undertake to represent insureds in seeking insurers for particular lines of insurance in this state. Any document executed by an insured that purports to appoint someone other than a licensed broker as a broker of record is invalid. Referring to such a person as an "agent of record" or "producer of record" or other title cures nothing. The only operative fact is the role played by persons in the insurance transaction. If they purport to act as representatives of the insured in negotiation of insurance with any insurer which has not appointed them, they are acting as brokers, and must be licensed as such. (We do not object to an internal company practice of referring to its agent as an "agent of record," as to a given account, nor to it honoring an insured's request for a change of agent.)

3. Except as noted in paragraph 5, below, (with respect to life and health insurance) and in paragraph 6 (with respect to property and casualty insurance), only a licensed broker may take applications for insurance and collect premiums therefor, without being appointed by the insurer. The most agents can do with respect to insurers that have not appointed them as their agents is to refer a prospective insured either to an appointed agent or to a broker, and then share the commission with that appointed agent or broker, as permitted by RCW 48.17.490, if the agent or broker wishes to enter into a commission-sharing arrangement.

> *Nonappointed agents cannot take an operative part in the insurance transaction, cannot solicit the insurance, cannot quote rates, cannot take applications, cannot collect premiums, cannot in any way give the public reason to believe they have authority to represent the company for which they are not appointed.*

Agents do not validate their conduct with respect to an insurer that has not appointed them its agents by forwarding applications and premiums to

a properly appointed agent. Further, appointed agents, general agents and insurers may not participate in such illegal practices.

4. Insurers, in particular, must observe these basic licensing requirements. The practice of an insurer refusing to appoint a person as its agent until that person submits some minimum number of applications to the insurer is prohibited. Except as permitted with respect to a *"rejected"* life or disability risk, as discussed in paragraph 5, or with respect to nonstandard or specialty insurance placed through a general agent, as discussed in paragraph 6, an insurer may transact insurance through and accept applications from only its own appointed agents. Insureds and applicants for insurance are entitled to deal with the insurance company's selected, trained and properly licensed agent.

Exceptions

5. While life and disability insurance agents must be appointed by each insurer which they hold themselves out to be authorized to represent, in the case of a *"rejected"* life or disability risk, with the knowledge and consent of the rejecting insurer, an agent may place any portion of the rejected risk with another authorized insurer without being appointed by such other insurer. In such case, pursuant to RCW 48.17.230, *"Any agent so placing rejected business becomes the agent for the company issuing the insurance with respect to that business just as if it had appointed such person as its agent."*

6. Since January 1, 1992, WAC 284-12-090 has permitted an insurer to empower its licensed General Agent to accept applications for insurance from agents who are not appointed by the insurer, but who are licensed for the kind of insurance involved. The insurance must be placed in a nonstandard or specialty market, which is defined as a market for other than life or disability insurance which provides coverage for risks which are not ordinarily insured by a majority of insurers authorized to write such risks and which are of a type that an agent will have such infrequent demands to obtain the coverage that a regular appointment of the agent to represent the insurer is not justified.

Before accepting an application from a nonappointed agent, the General Agent must furnish the agent with written instructions setting forth the agent's authority, emphasizing the limited nature thereof, and specifically stating that the agent has no authority to bind an insurance risk on behalf of the insurer. The instructions must set forth the procedures to be followed, and identify the nonstandard or specialty business as to which the agent may take applications, the application forms and material to be used to write the business, which may include underwriting criteria and rates. The instructions must be signed by the General Agent and the nonappointed agent, and each must keep a copy available to the commissioner upon request.

The rule covers the remittance of funds, receipts, applications (which must contain a disclaimer of binding authority), and other requirements that must be followed.

The nonappointed agent's activity is limited to the procurement of the insurance by the submission of the application to the General Agent. However, the General Agent may file notice with the commissioner that the nonappointed agent is granted a *"limited appointment,"* and that will permit the agent to act on behalf of the insurer with respect to servicing the insurance placed through the General Agent, including dealing with the insured relative to future transactions, such as policy changes, premium payments, renewing the policy, or reporting claims. The limited appointment is dependent upon the agent continuing to be licensed and is otherwise continuous until the insurer, general agent or nonappointed agent notify the commissioner it is terminated.

If the nonappointed agent is not given authority to *"service"* the applicable insurance, the insurer and General Agent must keep insureds promptly informed with respect to the persons authorized to act on behalf of the insurer. Records pertaining to each transaction must be kept by both the general agent and the nonappointed agent, in accord with the rule.

The nonappointed agent, with or without the limited authority permitted by the rule, will not be considered a broker or representative of the insured, *and is never authorized to bind coverage*. By permitting its General Agent to accept business from a nonappointed agent, the nonappointed agent becomes the representative of the insurer to the extent that the services of the agent are utilized in the transaction of insurance. Thus, the insurer will be deemed to have received any premiums paid by the applicant or insured to the nonappointed agent, but return premiums or claim payments delivered by the insurer or General Agent to the nonappointed agent are <u>not</u> deemed to have been paid to the insured or claimant until the payments are actually received by the insured or claimant. It should also be noted that an insurer is not permitted to cancel or refuse to renew any insurance policy because its contract or arrangement with a General Agent or a nonappointed agent through whom such policy was written has terminated.

<u>Fees</u>

7. While a broker may charge the insured a fee in connection with an insurance transaction, an agent may not. An agent is limited to the compensation paid by the insurer. Further, an agent may charge or receive only the premium stated in the policy, which must include all fees, charges, premiums or other consideration charged for the insurance or its procurement. (RCW 48.18.170 and 48.18.180.)

8. An agent is also prohibited from charging for general advice about a client's insurance program or for extra insurance-related services. An agent is the insurer's representative and may look only to it for compensation. In acting beyond the scope of the appointment from the company, the agent would be acting as a broker and would have to be so licensed. (RCW 48.17.060.)

9. Even a broker may not charge a fee if, as to a particular transaction, the broker is also licensed as an agent and is acting as the

broker to accept and place surplus line business for any insurance agent or broker licensed in this state for the kind of insurance involved, and may compensate such agent or broker therefor. Currently, a variety of bonds are being offered from out of state to agents for their customers. The bonds look "official," are priced right, but are worthless. Procuring one for a client puts agent's and broker's licenses in jeopardy, subjects them to fines and possibly to orders requiring them to replace the bonds at their expense. The message is: *Use a surplus line broker to obtain insurance from an unauthorized insurer.*

13. Agents and brokers who solicit an individual in this state to buy health insurance coverage, when such coverage is provided pursuant to a group insurance policy delivered out of state to an association or organization as policyholder, must comply with WAC 284-30-610 and give the required disclosure statement to the applicant, if obtaining such coverage or continuing it is dependent upon the covered individual being a member of or in someway affiliated with such association or organization.

14. People employed to work in an agent's or broker's office, devoting full time to clerical work, with incidental taking of insurance applications and receiving premiums in that office, need not be licensed, *provided their compensation is not related to the volume of such applications, insurances, or premiums.* (RCW 48.17.030.)

15. Termination of an independent property and casualty insurance agent's contract by an insurer is subject to RCW 48.17.591 (which was previously codified as RCW 48.18.285). Basically the statute requires that the insurer give the agent at least 120 days' advance written notice of its intent to terminate, during which notice period the insurer can not amend the contract without the agent's consent. Unless the agency contract provides otherwise, during the 120 day notice period the independent agent shall not write or bind any new business on behalf of the terminating insurer without specific written approval. However routine adjustments by insureds are permitted. Further, the terminating insurer must permit renewal of all its policies in the agent's book of business for a period of one year following the effective date of the termination, to the extent the policies meet the insurer's underwriting standards and the insurer has no other reason for nonrenewal. The rate of commission on the renewals shall be the same as the agent would have received had the agency agreement not been terminated.

From the standpoint of the insured, no insurer authorized to do business in this state may cancel or refuse to renew any policy that is subject to the statute simply because that insurer's contract with the independent agent through whom such policy was written has been terminated by the insurer, the agent, or by mutual agreement.

We hope this review of basic requirements is of assistance and will result in a better understanding of licensees' rights and obligations.

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